



## CAK DECISION ON THE PROPOSED ACQUISITION OF INDIRECT CONTROL OF BASE TITANIUM LIMITED BY EFR AUSTRALIA PTY LIMITED

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1. The Competition Authority of Kenya has approved the proposed indirect control of Base Titanium Limited by EFR Australia PTY Limited unconditionally.
2. This approval has been granted based on the finding that the transaction is unlikely to negatively impact competition in the market for titanium minerals in Kenya, nor elicit negative public interest concerns, the two key considerations during merger analysis.
3. **EFR Australia PTY Limited (EFR PTY)** is an undertaking incorporated in Victoria, Australia. It is a wholly-owned subsidiary of Energy Fuels Inc. (EFI) which is registered in Canada. EFI is a mining development and production company, which engages in the exploration, evaluation, development and mining/production of uranium, uranium/vanadium and rare earth element properties. It does not market any products or services in Kenya.
4. **Base Resources Limited** is an undertaking registered in Australia. It is listed on the Australian Securities Exchange. Its subsidiary, Base Titanium Mauritius Limited, controls Base Titanium Limited which is registered in Kenya. Base Titanium Limited owns and operates a mineral mine in Kwale County, Kenya where it explores ilmenite, rutile and zircon mainly for export.
5. The proposed transaction involves the acquisition of 100% of the issued and outstanding shares in the capital of Base Resources Limited by way of a scheme of arrangement in exchange for shares in the capital of Energy Fuels Inc. According to the parties, the rationale for the transaction is diversification of EFR PTY's mining business.
6. Therefore, the transaction qualified as a merger within the meaning of sections 2 and 41 of the Competition Act CAP 504. The Competition Act stipulates that a merger, or takeover, may occur when an undertaking directly or indirectly acquires control over another business within Kenya. This may happen through, among others, purchase/lease of shares, exchange of shares, vertical integration.
7. Further, merging parties whose combined turnover or assets, whichever is higher, is over Ksh. 1 Billion are required to seek approval from the Authority prior to implementing the proposed transaction. The transaction between EFR PTY and Base Titanium Limited met this threshold for mandatory notification and full analysis under the Competition (General) Rules, 2019.



8. During merger analysis, and in order to determine the impact that a transaction will have on competition, the Authority identifies the **relevant product market** as well as the **relevant geographic market**.
9. The **relevant product market** comprises products/services that are interchangeable or substitutable by the consumer due to their characteristics, prices and/or intended use. Based on this criteria, the relevant product market for the proposed transaction is the **market for titanium minerals**.
10. Determination of the **relevant geographic market** involves interrogating the area in which merging parties undertake the business and in which competition conditions are sufficiently similar. With regard to the proposed transaction, the target mainly exports its products to China, USA, Japan, Malaysia and Spain. It also sells some of its products locally. Therefore, the relevant geographic market is **global and national**.
11. The major by-product/co-product of mineral sand mining are Titanium Dioxide (Ilmenite and rutile) and Zircon.
12. Paint and coatings accounts for half of all pigment consumption while the plastics industry (the second largest market, accounting for just over a quarter of titanium dioxide consumption). The remaining production is allocated evenly across coated paper, paper laminate, fiber and ink manufacturers. The other major use of titanium feedstock is the production of titanium metal which is used by the aircraft, space, defense, industrial, medical and sporting goods industries.
13. The total annual global market for ilmenite and rutile is approximately 4 Million and 500,000 tonnes, respectively. Kenya represents about 0.08% and 0.25% of the global ilmenite and rutile market, respectively.
14. Base Titanium's main competitors for supply of ilmenite and rutile in the domestic market are suppliers in Sri Lanka, India, Belgium and China who account for 65% of the local sales. Base Titanium accounts for the balance – 35%. The domestic market accounts for less than 1% of the target's total sales. The target exports its products to USA, China, Japan, Malaysia and Spain.
15. One criterion of assessing a merger's impact on competition is the post-merger market share of the undertakings involved in the transaction. Post-merger, the merged entity's market share will not change since the target and the acquiring group do not operate in Kenya. Therefore, the proposed transaction will not affect the structure and concentration of the market for

titanium minerals in Kenya. Therefore, the proposed transaction **is unlikely to lead to a substantial lessening of competition in the market for titanium minerals in Kenya.**

16. During merger analysis, the Authority also considers the impact that a proposed transaction will have on public interest. Public interest in this case refers to various economically inclined concepts that, when considered, protect the welfare of the public. In the Competition Act, some of the public interest considerations are;

- a) extent to which a proposed merger would impact employment opportunities;
- b) impact on competitiveness of SMEs;
- c) impact on particular industries/sectors; and
- d) impact on the ability of national industries to compete in international markets.

17. As per the parties' submissions, this transaction will not elicit negative public interest concerns.

18. Premised on the above, the Authority approved **the proposed indirect control of Base Titanium Limited by EFR Australia PTY Limited unconditionally.**

